

UNITED STATES CIVIL SERVICE COMMISSION

WASHINGTON 25, D. C.

June 19, 1952

DEPARTMENTAL CIRCULAR NO. 671, Supplement No. 9

/Supersedes Departmental Circulars 671 (Section D); 671, Supplement 3; 671, Supplement 6; and 682. Departmental Circulars 671 (except for Section D) and 671, Supplement 1, have already been superseded by Transmittal Sheet 368./

TO HEADS OF DEPARTMENTS AND INDEPENDENT ESTABLISHMENTS

SUBJECT: Revision of the Whitten Amendment by Section 1302, Third Supplemental Appropriation Act, 1952).

1. Introduction

Attached is a copy of Section 1310 of Public Law 253 (The Whitten Amendment) as revised by Section 1302 of the Third Supplemental Appropriation Act, 1952, signed by the President on June 5, 1952 which makes revisions in the Whitten Amendment. Civil Service Regulations 8.107, 8.109, and 8.110 have been revised accordingly and copies are also attached.

2. Primary Changes

The main effects of the revisions are:

- (a) Permanent promotions will be permitted under some circumstances.
- (b) In determining whether an employee meets the restrictions on promotion, prior service to be considered will be all service and not just that service immediately prior to the proposed promotion.
- (c) The Commission is authorized to make exceptions to the promotion restrictions of the law in order to avoid undue hardship or inequity in meritorious cases.
- (d) In the excepted service, employees eligible "for appointment, in accordance with a regular appointment system or procedure established prior to September 1, 1950" may be promoted to higher grade positions without regard to the promotion restrictions of Section 1310(c). This provision is not covered in the Commission's regulations since it applies to excepted positions only.

3. Permanent Promotions

Permanent promotions under certain circumstances are authorized by Section 1302(a) and Regulations 8.107 and 8.110(a). Section 1302(a) of the Act grants each agency authority to determine the conditions under which the provisions will be applied. The Commission will issue no instructions relating to those conditions.

Each employee whose temporary promotion is converted to permanent under these provisions must be notified and a notation made in his official personnel folder.

Standard Form 50 need not be submitted to the Commission when the only change is from temporary to permanent at the same or lower grade level except as specified in the next paragraph.

Standard Form 50 must be executed and submitted to the Commission if the conversion of promotion involves a change from a non-apportioned position to an apportioned position or vice versa. The nature of action should be shown as "Indefinite promotion of (date of indefinite promotion), made permanent." The effective date of the permanent promotion is the date the conversion is made. The authority for the permanent promotion is Section 1302 of the Third Supplemental Appropriation Act, 1952. The "To" column must show the position, etc., to which permanent promotion is being made. In the case of a change from a non-apportioned to an apportioned position, proof or a statement of residence must be obtained according to instructions on page X-1-22.01(TS 384) of the Federal Personnel Manual, and the State must be shown on Standard Form 50.

4. Restrictions on Promotion

(a) Service to be counted: In computing periods of service required in subsections (c), (d), and (f) of Section 8.109 of the Regulations, the following service at the required or higher grade will be included, whether immediately preceding the promotion or not:

- (1) Service in the executive, legislative, and judicial branches. This includes service in excepted positions, service under job employment, and service in positions not subject to the Classification Act (see paragraph (b)(3) below for further discussion of services in positions not subject to the Classification Act).
- (2) Periods of leave without pay.

(b) Positions not subject to the Classification Act.

- (1) The restrictions of subsection 8.109(b) and subsequent subsections do not apply in movements to positions not subject to the Classification Act.
- (2) The restrictions of subsection 8.109(b) and subsequent subsections are likewise not applicable to movements from positions not subject to the Classification Act to positions subject to the Classification Act, with one exception. That exception is where the employee served during the immediately preceding year in a position under the Classification Act. In such case and for this purpose the employee will be considered as though he had continued in the earlier classified position during the period of time covered by his service in the unclassified position (e.g., an employee in a GS-7 position is placed in an unclassified position on January 2, 1952; on July 1, 1952 he is proposed for promotion from the unclassified position to a GS-9 position. This promotion may be approved only if he could likewise have been promoted had he continued to serve in the GS-7 position through July 1, 1952).

- (3) Service in positions not subject to the Classification Act will be credited in meeting the promotion restrictions of Regulation 8.109 under the following conditions:
- (i) When two periods of service under the Classification Act are interrupted for less than one year by other service, such latter service shall be counted as a continuation of the prior service in the position subject to the Classification Act. Example: An employee served 6 months at GS-7. He then served 5 months in an unclassified position equivalent on a money basis to GS-9. However, the service in the unclassified position can be credited only at GS-7 for return to a position under the Classification Act or for subsequent promotion to another Classification Act position.
 - (ii) Except in situations covered by paragraph (3)(i) above, service in positions not subject to the Classification Act will be credited as service at the Classification Act grade having an equivalent salary level. A non-Classification Act position is at an equivalent salary level to a given Classification Act grade if the salary of the employee in that position was approximately equivalent to or higher than the minimum rate of the particular Classification Act grade. It will be considered equivalent if it is not more than one within-grade step for that grade below the minimum rate of the grade.
- Overtime, overseas allowances, and so forth, will not be included in computing the pay of employees in positions not subject to the Classification Act. In arriving at the comparable Classification Act grade, pay rates in effect at the time of the service in question will be used.
- (4) The Commission and the agencies have a responsibility under the Whitten Amendment for preventing excessively rapid promotions even in situations not subject to the specific service restrictions of the Amendment. Agencies must apply qualifications standards strictly.
- (c) Training Agreements: Employees may be promoted a maximum of two grades in one year solely as a result of training agreements. However, in some cases where the employee has prior service which can be counted in determining his eligibility for further promotion, promotions of more than two grades in one year might result. In other cases the employee may have recently been promoted under another subsection of Regulation 8.109 and that promotion plus the promotions under the training agreements may result in promotions of more than two grades in a one year period.
 - (d) Veterans restored under Part 35 of the Commission's regulations. Since veterans restored under Part 35 are considered to have continuous service, any promotion after restoration is subject to the provisions of Regulation 8.109. Military service will be counted as continuation of the service in the grade the employee left unless he is promoted while in the military service. If he is promoted while in the military service all the time following promotion will be counted as service at the grade to which he is promoted.

If a veteran has been in the military service for a year or more and his agency desires to reemploy him in a position for which he would not be eligible under Regulation 8.109, the employee may waive his restoration rights and receive indefinite appointment under Regulation 7.109 (a)(1). Under such conditions he could be reappointed at any grade for which he is qualified. Such a reappointment would not entitle the employee to the protections he would have if restored under Part 35. In any case where such action is under consideration an agency must inform the veteran thoroughly of the rights he is waiving in order to receive the higher grade. The decision must be entirely up to the veteran. Any waiver of rights by the veteran should be documented.

- (e) Exceptions by the Commission. The revised Section 1310 permits exceptions to the promotion restrictions to be requested by the head of the agency. On the basis of its knowledge of Congressional intent the Commission interprets this requirement as permitting such requests to be made only by the head of the agency himself. For example, a request for exception in the case of any employee of the Army would have to be signed by the Secretary of the Army. All such requests will be submitted to the Central Office of the Civil Service Commission and should be identified as requests for exception under Regulation 8.109(j).

The requests must include a statement signed by the head of the agency including all the facts justifying a finding of undue hardship or inequity.

This particular provision vests in the Commission authority to make exceptions in meritorious cases in promotions to excepted positions as well as in promotions to positions in the competitive service.

5. Qualifications Requirements

In addition to meeting the requirements of Regulation 8.109 employees must meet qualifications standards for promotion. As in the past, promotions to positions for which no qualification standards have been issued and cases in which a waiver of qualification requirements is proposed must be presented to the appropriate office of the Commission for prior approval.

6. Effective Date

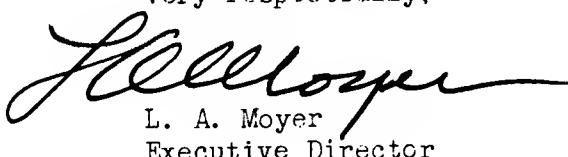
The revised Regulations and these instructions are effective on the date of enactment of the Third Supplemental Appropriation Act, 1952, i.e., on June 5, 1952.

7. Inquiries

Inquiries may be addressed to the Examining and Placement Division of the Central Office, Extension 471, or to the appropriate regional office of the Commission.

By direction of the Commission:

Very respectfully,



L. A. Moyer
Executive Director

Attachments: 1. Section 1310 of Public Law 253
2. Revisions of Regulations 8.107, 8.109, and 8.110(a)

SECTION 1310 OF PUBLIC LAW 253 (THE WHITTEN AMENDMENT)
AS REVISED BY SECTION 1302 OF THE
THIRD SUPPLEMENTAL APPROPRIATION ACT, 1952, APPROVED JUNE 5, 1952

Sec. 1310. Immediately upon the enactment of this Act and until termination of the national emergency proclaimed by the President on December 16, 1950:

(a) The Civil Service Commission and the heads of the executive departments, agencies, and corporations shall make full use of their authority to require that initial appointments to positions in and outside the competitive civil service shall be made on a temporary or indefinite basis in order to prevent increases in the number of permanent personnel of the Federal Government above the total number of permanent employees existing on September 1, 1950: Provided, That any position vacated by a permanent employee called to military service or transferred to a national defense agency shall not be filled except on a temporary or indefinite basis. All reinstatements and promotions in the Federal civil service shall be made on a temporary or indefinite basis, and all permanent employees who are transferred from one agency to another shall retain their status as permanent employees in the agency to which transferred at the grade or basic pay level of their permanent positions in the agency from which transferred. All appointments, reinstatements, transfers, and promotions to positions subject to the Classification Act of 1949 shall be made with the condition and notice to each individual appointed, reinstated, transferred, or promoted that the classification grade of the position is subject to post-audit and correction by the appropriate departmental or agency personnel office or the Civil Service Commission. All transfers of permanent employees made on a temporary or indefinite basis since September 1, 1950, shall be changed to a permanent basis as of the effective date of this Act: Provided, That such employees shall retain their status as permanent employees in the agency to which transferred at the grade or basic pay level of their permanent positions in the agency from which transferred: Provided further, That any agency may promote any employee permanently to a position if such promotion will not increase the number of employees holding permanent positions in the grade of such position in such agency above the number in such grade in such agency prior to September 1, 1950: Provided further, That permanent promotions may be made to any position in a category for which the Civil Service Commission authorizes permanent appointments under the terms hereof.

(b) The Civil Service Commission shall facilitate the transfer of Federal employees from nondefense to defense activities and encourage the retention of employees in defense activities, and shall provide reemployment rights for permanent employees in the activities from which such employees are transferred.

(c) The Civil Service Commission shall make full use of its authority to prevent excessively rapid promotions in the competitive civil service and to require correction of improper allocations to higher grades of positions subject to the Classification Act of 1949, as amended. No person in any executive department or agency whose position is subject to the Classification Act of 1949, as amended, shall be promoted or transferred to a higher grade

subject to such Act without having served at least one year in the next lower grade: Provided, That the Civil Service Commission for positions in the competitive service and the head of the employing agency for positions outside the competitive service may by regulation provide for promotions of two grades in one year (1) to positions not higher than GS-5; (2) to positions not higher than GS-11 which are in a line of work properly classified under the Classification Act of 1949 at two-grade intervals; (3) to positions in the same line of work when the employee has completed a training period under a training program approved by the Civil Service Commission for positions in the competitive service, or approved by the head of the employing agency for positions outside the competitive service; and (4) of an employee of the agency concerned when there is no position in the normal line of promotion in the grade immediately below that of the position to be filled: Provided further, That this subsection shall not apply to any case involving an employee who is within reach for appointment to a higher grade position on a competitive civil service register, or is eligible for appointment, in accordance with a regular appointment system or procedure established prior to September 1, 1950, to a higher grade position outside the competitive Civil Service, or being advanced up to a grade level from which he had been demoted or separated because of reduction in force or being advanced to a grade level not exceeding that for which he had previously established eligibility as required by the terms hereof: Provided further, That, notwithstanding the provisions hereof, and in order to avoid undue hardship or inequity, the Civil Service Commission, when requested by the head of the agency involved, may authorize promotions in individual cases of meritorious nature.

(d) From time to time, but at least annually, each executive department and agency shall (1) review all positions which since September 1, 1950, have been created or placed in a higher grade or level of difficulty and responsibility of work or in a higher basic pay level, (2) abolish all such positions which are found to be unnecessary, (3) with respect to such positions which are found to be necessary, make such adjustments as may be appropriate in the classification grades of those positions which are subject to the Classification Act of 1949, as amended, or in the basic pay levels of those positions which are subject to other pay-fixing authority. Not later than July 31 of each year each department and agency shall submit a report to the Post Office and Civil Service Committees and Appropriations Committees of the Senate and House of Representatives concerning the action taken under this paragraph, together with information comparing the total number of employees on the payroll on June 30 and their average grade and salary with similar information for the previous June 30, and each annual and supplemental budget estimate shall include a statement comparing the average grade and salary provided for in each item of appropriation or fund allowance therein with similar figures reported for the two previous periods.

REVISION OF REGULATIONS 8.107, 8.109, AND 8.110(a)

Sec. 8.107.--Promotions, demotions, reassessments, and transfers without reemployment rights. (a) All promotions after September 1, 1950, shall be indefinite *except that:

- (1) An agency may promote any employee permanently to a position if such promotion will not increase the number of employees holding permanent positions in the grade of such position in such agency above the number in such grade in such agency prior to September 1, 1950.
- (2) Permanent promotions may be made to any position in a category for which the Civil Service Commission authorizes permanent appointments.*

(b) All reassessments of an employee on and after December 1, 1950, to positions above the grade (or level) which he last occupied on a permanent basis shall be indefinite *unless he is made permanent at that grade (or level) under one of the exceptions in subsection 8.107(a).* All reassessments within his last permanent grade (or level) may be either permanent or indefinite in the discretion of the head of the agency, except that any reassignment to the position last held on a permanent basis shall be permanent.

(c) All demotions of an employee on and after December 1, 1950, to positions above the grade (or level) which he last occupied on a permanent basis shall be indefinite *unless he is made permanent at that grade (or level) under one of the exceptions in subsection 8.107(a).* All demotions to positions below his last permanent grade (or level) shall be permanent. All demotions to positions within his last permanent grade (or level) may be either permanent or indefinite in the discretion of the head of the agency, except that a demotion to the position last held on a permanent basis shall be permanent.

(d) The transfer of a permanent employee from one agency to another shall be permanent. However, when such transfer is to a position above the grade (or level) the employee last occupied on a permanent basis, his occupancy of the higher grade position shall be on an indefinite basis, *unless the promotion is made permanent under one of the exceptions in subsection 8.107(a).*

Sec. 8.109.--*Restrictions on promotion, transfer or appointment to a higher grade, and reassignment to a different line of work. (a) Reassessment and promotion after competitive appointment. No person shall be reassigned to a different line of work, promoted, transferred or appointed at a higher grade or in a different line of work in the same grade within three months after his last competitive appointment under Section 2.113, or 2.115(a), or (b).

(b) Application of the following subsections. (1) The restrictions on promotion in the following subsections apply to transfer to a higher grade, and appointment and reemployment at a higher grade within one year after separation from employment of an indefinite or permanent nature.

- (2) These restrictions apply when both the position last held and the position being filled are subject to the Classification Act of 1949, as amended. However, they do not apply when the position last held is outside the competitive service and in the legislative or judicial branches of the government. The restrictions apply to movements from positions not subject to the Classification Act to positions subject to the Act only if the employee has held a position subject to the Act within the preceding year.
- (3) The periods of service required by subsections (c), (d), and (f) shall include all service at the appropriate or higher level in the Federal civilian service. However, when two periods of service under the Classification Act are interrupted for less than one year by other service, such latter service shall be counted as a continuation of the prior service in the position subject to the Classification Act.

(c) Promotions to positions at GS-12 or above.--An employee may be promoted to a position at GS-12 or above after he has served one year at the next lower grade.

(d) Promotions to positions at GS-6 through GS-11. (1) An employee may be promoted to a position at GS-6 through GS-11 which is in a line of work properly classified at two-grade intervals after he has served one year in a position two grades lower.

(2) An employee may be promoted to a position at GS-6 through GS-11 which is in a line of work properly classified at one grade intervals after he has served one year at the next lower grade.

(e) Promotions to positions at GS-5 or below. An employee may be promoted to a position at GS-5 or below which is not more than two grades above the lowest grade he held within the past year under permanent or indefinite appointment. However, an employee may be promoted to any grade at GS-5 or below which he previously held or to which he could have previously been promoted under this paragraph.

(f) Normal line of promotion. An employee of the agency who has one year of service two grades lower than the position being filled may with the prior approval of the Commission be promoted without regard to the restrictions of subsections (c) and (d) if there is no position in the normal line of promotion at the next lower grade.

(g) Training agreements. The restrictions of this section shall not apply to any employee who is being promoted in accordance with a training agreement which has been approved by the Commission. Promotions of more than two grades in one year may not be made solely on the basis of a training agreement or series of training agreements.

(h) Reduction in force. The restrictions in this section shall not apply to any person who is being advanced to any grade or level up to that from which he had ever been demoted or separated by any agency because of reduction-in-force.

(i) Persons within reach on registers. The restrictions of this section shall not apply to any person who is within reach on a civil service register for competitive appointment to the position to be filled.

(j) Undue hardship or inequity. In order to avoid undue hardship or inequity, the Commission may when requested by the head of the agency involved authorize promotions in individual cases of meritorious nature without regard to the restrictions of this section.*

Sec. 8.110.--Tenure after change of position. (a) The promotion, demotion, or reassignment of a permanent employee shall not change his status as a permanent employee of the agency. A permanent employee transferred from one agency to another, shall have the status of a permanent employee in the new agency at the grade or level of his permanent position in the agency from which transferred,*unless he is transferred to a higher grade and the promotion is made permanent under one of the exceptions in subsection 8.107(a).* However, when the position to which transferred is in a lower grade or level than such permanent position, he shall have the status of a permanent employee in the new agency at the grade or level to which transferred. At the time he leaves his permanent position the agency shall record in his Official Personnel Folder sufficient information to identify clearly the position he last held on a permanent basis.